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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 United States of America, ) No. CV-09-8096-PCT-NVW  
10 Plaintiff, ) **ORDER**  
11 vs. )  
12 )  
13 \$133,420.00 in U.S. Currency, )  
14 Defendant. )  
15

16 Before the Court are Claimant Damon Louis' Motion to Suppress (doc. # 22), the  
17 Government's Motion to Strike Claim and Answer of Damon J. Louis (doc. # 27), the  
18 Government's Motion to Stay Louis' Motion to Suppress (doc. # 29), Louis' Motion for  
19 Summary Judgment (doc. # 42), Louis' Motion to File Supplemental Memorandum (doc.  
20 # 53) and the Government's Motion to Strike Louis' Discovery Responses (doc. # 79).

21 **I. Facts**

22 On January 6, 2009, Officer Mace Craft of the Arizona Department of Public  
23 Safety stopped a white 2009 Buick driven by Claimant Damon Louis on the westbound  
24 Interstate 40 in Arizona. When prompted, Louis produced a California driver's license  
25 and a rental agreement indicating he had rented the vehicle from Avis Car Rental in San  
26 Francisco, California, on January 2, 2009. The vehicle was due to be returned on January  
27 9, 2009.  
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1           Officer Craft asked Louis where he was traveling from and why he did not fly.  
2 Louis responded that he had visited Albuquerque for a friend's wedding and had driven  
3 with a friend who remained there. When Officer Craft inquired about the wedding, Louis  
4 explained that the wedding was in fact a month ago and that he had returned to  
5 Albuquerque for the ceremony. Officer Craft eventually completed a traffic warning and  
6 provided Louis with a copy. He then asked whether there was anything illegal in the  
7 vehicle, to which Louis responded no. Louis also twice denied having any large amounts  
8 of U.S. currency in the vehicle.

9           Another officer who had arrived on the scene subsequently conducted a pat-down  
10 of Louis' person, which revealed two cell phones. Although the parties dispute whether  
11 Louis consented to a search of his vehicle or to a canine drug detection sniff, Officer  
12 Craft at some point directed his canine to sniff the exterior of the vehicle. When the  
13 canine alerted, Officer Craft informed Louis that he had probable cause to search the  
14 vehicle and again asked if there was anything illegal inside. Louis said no. A search of  
15 the trunk revealed three cardboard boxes, two of which contained large decorative rocks.  
16 The third box contained a plastic grocery bag and a black box labeled "Black Jet  
17 Throwing Dagger Triple Set". The grocery bag contained three zip-lock bags of U.S.  
18 currency totaling \$133,420.00. Officer Craft subsequently placed Louis in handcuffs. A  
19 search of Louis' person revealed a receipt, dated January 6, 2009, for the purchase of the  
20 set of throwing daggers found in the third box. Louis was thereafter escorted to the  
21 Arizona Department of Public Safety in Flagstaff, Arizona.

22           Upon arrival, two detectives advised Louis of his Miranda rights and conducted an  
23 interview, a digital video recording of which Louis has submitted as an exhibit. During  
24 the interview, Louis explained that after he rented the 2009 Buick in San Francisco,  
25 California, he drove to Denver, Colorado, and was on his way back to San Francisco  
26 when Officer Craft stopped him. He also stated that he knew the currency was in the  
27 trunk of the vehicle because he had put it there, but denied any knowledge of the amount  
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1 of the currency. He also admitted that the currency was not his.<sup>1</sup> At the conclusion of the  
2 interview, Louis was invited to sign a DPS “Disclaimer of Ownership of Currency or  
3 Property” form, but declined to do so without first consulting an attorney. He was  
4 subsequently released and advised that he was free to leave. His vehicle was returned,  
5 but law enforcement retained the two cell phones and the currency.

6 On March 9, 2009, Louis filed a claim for the defendant currency with the Drug  
7 Enforcement Administration. The Government initiated this *in rem* civil forfeiture  
8 proceeding on June 5, 2009, alleging that the currency is subject to forfeiture pursuant to  
9 both 18 U.S.C. § 981(a)(1)(C) and 21 U.S.C. § 881(a)(6) as proceeds traceable to  
10 controlled substance offenses. In August 2009, Louis filed a claim and answer contesting  
11 the forfeiture. The claim alleges that Louis has “an ownership and/or a possessory  
12 interest in, and the right to exercise dominion and control over, all or part of the defendant  
13 property.” (Doc. # 14.)

14 On October 5, 2009, the Government propounded special interrogatories pursuant  
15 to Rule G(6) of the Supplemental Rules for Certain Admiralty or Maritime Claims and  
16 Asset Forfeiture Actions, which allows the Government to serve interrogatories limited to  
17 “the claimant’s identity and relationship to the defendant property without the court’s  
18 leave at any time after the claim is filed and before discovery is closed.” Interrogatory 2  
19 requested the following information:

20 State the extent and describe with particularity the nature of your interest in the  
21 defendant currency, and identify how you acquired that interest. Your answer  
should include, but not be limited to, the following:

22 (a) The date(s), time, place and manner in which the defendant currency  
23 was obtained, including the names, address and telephone numbers of the  
person(s) from whom the currency was obtained.

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26 <sup>1</sup>Louis denies admitting at the interview that he is not the owner of the currency, but  
27 the recording of the interview very clearly indicates otherwise. At one point, one of the  
28 detectives said, “You’ve made a statement—the money’s not yours, I’m assuming the money’s  
not yours?” Louis unmistakably shook his head and responded, “No.”

1 (b) The circumstances of each transaction by which you acquired or  
2 obtained any interest in the defendant currency.

3 (c) The reason(s) the defendant currency was obtained, and witnesses,  
4 including the names, addresses, and telephone numbers of such witnesses, to  
any of the transactions by which the defendant currency was obtained.

...

5 Louis objected to the request on various grounds, including his Fifth Amendment right  
6 against self-incrimination and his Fourth Amendment rights against unreasonable  
7 searches and seizures, but ultimately provided the following limited response: "Without  
8 waiving said objections, my interest in the defendant property is as the owner and  
9 possessor of said property, with a right to exercise dominion and control over said  
10 property." His responses to the other interrogatories were similarly conclusory and  
11 incomplete. While Louis willingly responded to the Government's inquiries into the type  
12 of property interest he asserted, he repeatedly declined, on Fifth Amendment self-  
13 incrimination grounds, to identify how, why, or where he obtained the currency.

14 On January 14, 2010, Louis filed a motion to suppress (doc. # 22), seeking, in part,  
15 suppression of the statements he made during his interview on January 6, 2009, as fruits  
16 of the allegedly unlawful seizure and search of his vehicle. The Government responded  
17 by filing a motion to strike Louis' claim and answer for lack of standing (doc. # 27) and a  
18 motion to stay consideration of the motion to suppress pending resolution of the standing  
19 issue (doc. # 29). The Government has also moved to strike Louis' responses to the  
20 special interrogatories on grounds of improper use of the Fifth Amendment privilege  
21 against self-incrimination (doc. # 79).

## 22 II. Analysis

### 23 A. Motion to Stay

24 In its motion to stay, the Government contends that the issue of standing must be  
25 resolved before Louis' motion to suppress is considered. Louis, on the other hand, argues  
26 that because the motion to suppress seeks, in part, suppression of statements he made to  
27 law enforcement officers regarding his relationship to the defendant currency, and  
28

1 because those statements inform the standing inquiry, the Court should resolve the motion  
2 to suppress before addressing standing.

3 Other courts have required claimants to establish Article III standing as a  
4 prerequisite to bringing a motion to suppress in a forfeiture proceeding. *See United States*  
5 *v. \$ 1,185,135.00 in U.S. Currency*, 320 Fed. Appx. 893, 894 (11th Cir. 2008) (noting that  
6 a claimant must establish standing to challenge the forfeiture proceeding in order to raise  
7 a suppression claim); *United States v. \$ 321,470.00, U.S. Currency*, 874 F.2d 298, 300  
8 (5th Cir. 1989) (affirming the district court’s finding that the claimant’s lack of Article III  
9 standing mooted his motion to suppress); *United States v. \$ 543,190.00 in U.S. Currency*,  
10 535 F. Supp. 2d 1238, 1248 (M.D. Ala. 2008) (addressing standing to contest the  
11 forfeiture before addressing the lawfulness of the seizure). However, the order in which  
12 the motions may be considered need not be decided in this case because, as explained  
13 below, Louis has failed to establish standing even without considering the statements he  
14 seeks to suppress.

### 15 **B. Standing**

16 The Civil Asset Forfeiture Reform Act of 2000 (“CAFRA”), 18 U.S.C. § 983,  
17 governs all *in rem* civil forfeiture proceedings commenced on or after August 23, 2000.  
18 *See United States v. Approximately \$1.67 Million in United States Currency*, 513 F.3d  
19 991, 998 (9th Cir. 2008). Those forfeiture proceedings are also governed by the  
20 Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture  
21 Actions. *See* 18 U.S.C. § 983(a)(4)(A); *United States v. \$ 100,348.00 in U.S. Currency*,  
22 354 F.3d 1110, 1117 (9th Cir. 2004).

23 Supplemental Rule G, effective in 2006, permits any person claiming an interest in  
24 the property to contest the forfeiture by filing a claim in the court where the action is  
25 pending. Supp. R. Certain Adm. & Mar. Cl. G(5)(a)(i). At any time after the claim is  
26 filed and before the close of discovery, the Government “may serve special  
27 interrogatories limited to the claimant’s identity and relationship to the defendant  
28 property . . . .” *Id.* at G(6)(a). Furthermore, the Government may move to strike the

1 claim for lack of standing at any time before trial. *Id.* at G(8)(c)(i)(B). The motion to  
2 strike “may be presented as a motion for judgment on the pleadings or as a motion to  
3 determine after a hearing or by summary judgment whether the claimant can carry the  
4 burden of establishing standing by a preponderance of the evidence.” *Id.* at  
5 G(8)(c)(ii)(B). As further explained by the 2006 Advisory Committee Notes to  
6 Supplemental Rule G(8)(c)(ii)(B):

7       If a claim fails on its face to show facts that support claim standing, the claim  
8       can be dismissed by judgment on the pleadings. If the claim shows facts that  
9       would support claim standing, those facts can be tested by a motion for  
10      summary judgment. If material facts are disputed, precluding a grant of  
11      summary judgment, the court may hold an evidentiary hearing. The evidentiary  
12      hearing is held by the court without a jury. The claimant has the burden to  
13      establish claim standing at a hearing; procedure on a government summary  
14      judgment motion reflects this allocation of the burden.

15       Here, the Government has presented its motion to strike as a motion for summary  
16      judgment, accompanied by Louis’ responses to the Government’s Supplemental Rule  
17      G(6) special interrogatories. The Government argues that Louis lacks both Article III and  
18      statutory standing.<sup>2</sup> Statutory standing ensures the claimant has complied with the  
19      procedural requirements of 18 U.S.C. § 983(a)(4)(A) and the Supplemental Rules for  
20      Certain Admiralty and Maritime Claims. *United States v. \$ 114,031.00 in U.S. Currency*,  
21      284 Fed. Appx. 754, 756 (11th Cir. 2008); *United States v. \$ 487,825.00 in United States*  
22      *Currency*, 484 F.3d 662, 664 (3d Cir. 2007). Because Louis’ procedural compliance  
23      remains unchallenged, the Court need address only Article III standing.

24       A claimant bears the burden of establishing Article III standing, the threshold  
25      function of which is “to ensure that the government is put to its proof only where  
26      someone with a legitimate interest contests the forfeiture.” *United States v. \$ 557,933.89,*  
27      *More or Less, in U.S. Funds*, 287 F.3d 66, 79 (2d Cir. 2002). A claimant must therefore  
28      demonstrate that he or she has “a sufficient interest in the property to create a case or

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<sup>2</sup>In its Reply, the Government argues for the first time that Louis also lacks prudential standing. The Court finds it unnecessary to address that issue. Therefore, Louis’ motion to file a supplemental memorandum addressing prudential standing will be denied.

1 controversy.” *United States v. Real Property Located at 475 Martin Lane*, 545 F.3d 1134,  
2 1140 (9th Cir. 2008). Because standing requirements “are not mere pleading  
3 requirements” but rather an “indispensable part” of a case, standing must be supported  
4 “with the manner and degree of evidence required at the successive stages of the  
5 litigation.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Therefore, while  
6 general allegations are sufficient at the pleading stage, they are no longer sufficient at the  
7 summary judgment and trial stages when some evidence of standing is required. *Id.*

8 An oft-cited Ninth Circuit case discussing standing requirements in the context of  
9 civil forfeiture proceedings is *United States v. \$ 191,910.00 in U.S. Currency*, 16 F.3d  
10 1051, 1058 (9th Cir. 1994). There, in reviewing the denial of a motion to dismiss for lack  
11 of standing, the Ninth Circuit explained that “to contest a forfeiture, a claimant need only  
12 have some type of property interest in the forfeited items,” including an ownership or  
13 possessory interest. *Id.* at 1057. The court went on to extrapolate several principles of  
14 standing from other cases, concluding:

15 As an initial matter, a simple claim of *ownership* will be sufficient to create  
16 standing to challenge a forfeiture. Mere *unexplained possession* will not be  
17 sufficient. However, where a claimant asserts a *possessory interest* and  
provides some explanation of it (e.g., that he is holding the item for a friend),  
he will have standing.

18 *Id.* at 1058 (emphasis in original). Because the claimant in *\$ 191,910.00* claimed to own  
19 some of the money seized from his possession and explained that he was carrying the rest  
20 for a client, standing was satisfied. *Id.*

21 That *\$ 191,910.00* was decided prior to the enactment of both CAFRA and  
22 Supplemental Rule G raises a number of uncertainties. For one, it is unclear whether  
23 CAFRA and Supplemental Rule G worked a substantive change to pre-existing case law  
24 on standing requirements in civil forfeiture proceedings. The parties have been unable to  
25 point to, and the Court has been unable to find, anything in either CAFRA or  
26 Supplemental Rule G indicating as much. It appears that CAFRA and Supplemental Rule  
27 G merely clarify the procedural vehicles the Government may use to challenge a  
28 claimant’s standing.

1 Even assuming \$ 191,910.00 remains good law, more uncertainty abounds.  
2 Because there is no discussion in \$ 191,910.00 of the principle that standing must be  
3 established with the requisite degree of proof required at successive stages of the  
4 litigation, it is unclear whether the general principles of standing espoused in the decision  
5 apply only to the pleading stage or also to the summary judgment and trial stages. As a  
6 practical matter, the distinction has no bearing on whether Louis' claimed *possessory*  
7 interest in the currency is sufficient because he has provided no explanation of his  
8 possession whatsoever. \$ 191,910.00 is clear that mere unexplained possession is  
9 inadequate to establish standing. The distinction is important, however, insofar as Louis'  
10 claim of *ownership* is concerned because a simple claim of ownership is sufficient under  
11 \$ 191,910.00. Whether it is adequate here turns on whether the principles of standing in \$  
12 191,910.00 apply to the summary judgment stage.

13 A recent Ninth Circuit decision, relying on \$ 191,910.00 as authority for what is  
14 required to satisfy standing specifically "at the motion to dismiss stage," appears to have  
15 confined the applicability of \$ 191,910.00 to the pleading stage. *Real Property Located*  
16 *at 475 Martin Lane*, 545 F.3d at 1140. At least one district court has done the same in an  
17 attempt to harmonize \$ 191,910.00, which may be read to say that a mere allegation of  
18 ownership is sufficient to establish standing, with other seemingly conflicting Ninth  
19 Circuit authority. *See United States v. \$ 57,790.00 in U.S. Currency*, 263 F. Supp. 2d  
20 1239, 1241-42 (S.D. Cal. 2003) (reconciling \$ 191,910.00 with *United States v. Real*  
21 *Property Located at Section 18*, 976 F.2d 515, 520 (9th Cir. 1991) (requiring claimant to  
22 establish standing by a preponderance of the evidence)).

23 There is good reason to limit \$ 191,910.00 to the pleading stage. For one, *Lujan*  
24 unequivocally states that something more than a mere allegation is necessary to support  
25 standing at the summary judgment and trial stages. 504 U.S. at 561. For another, as  
26 recognized by the district court in \$ 57,790.00, if mere allegations were enough at the  
27 summary judgment and trial stages, it would be impossible, as a practical matter, for the  
28 Government to challenge illegitimate claims of ownership. 263 F. Supp. 2d at 1244.



1       The above concerns are implicit in a recent Tenth Circuit discussion of standing  
2 requirements at the summary judgment stage of a forfeiture proceeding. *See United*  
3 *States v. \$ 148,840.00 in United States Currency*, 521 F.3d 1268 (10th Cir. 2008). There,  
4 the court relied extensively on \$ 191,910.00 but also acknowledged the principle that a  
5 claimant “bears the burden of establishing his own constitutional standing at all stages in  
6 the litigation.” *Id.* at 1273. Reconciling the two, the court held that on summary  
7 judgment, a person claiming an ownership interest establishes standing by producing an  
8 evidentiary assertion of ownership in conjunction with some other corroborating evidence  
9 of ownership, for example, actual possession of the res at the time it was seized. *Id.* at  
10 1275. There was enough evidence of standing to deny summary judgment because the  
11 claimant offered his deposition testimony that he owned the currency as well as the  
12 undisputed fact that the currency was seized from the vehicle he was driving. *Id.* at 1277.

13       However, the Tenth Circuit noted in dictum that the case would be very different  
14 “if the district court had exercised its discretion to strike [the claimant’s] claim of  
15 ownership to the currency in light of his repeated invocations of the *Fifth Amendment*  
16 privilege.” *Id.* at 1277 (emphasis in original). In civil cases, the Fifth Amendment  
17 privilege against self-incrimination cannot be used as both a shield and a sword, discarded  
18 “for the limited purpose of making statements to support a summary judgment motion”  
19 but invoked to shield those statements from further scrutiny. *In re Edmond*, 934 F.2d  
20 1304, 1308 (4th Cir. 1991). A witness’ testimony may therefore be stricken if he or she  
21 invokes the Fifth Amendment in response to further questioning about the subject of the  
22 testimony. *Id.* at 1308-09 (striking party’s affidavit on summary judgment because he  
23 refused to submit to a deposition on Fifth Amendment grounds); *United States v. Parcels*  
24 *of Land*, 903 F.2d 36, 43 (1st Cir. 1990) (finding the district court “had ample authority”  
25 to strike party’s affidavit after he refused to answer deposition questions about the subject  
26 of the affidavit testimony on Fifth Amendment grounds). Because the claimant in \$  
27 148,840.00 repeatedly asserted, at his deposition, that he owned the seized currency but  
28 invoked the Fifth Amendment privilege in response to specific questions about the source

1 of the money and why he was transporting it, the testimony could have been stricken.  
2 521 F.3d at 1272, 1277. However, because it was not stricken, the district court “was  
3 obliged to accept [the] claim of ownership in determining whether [the claimant] had met  
4 his burden of proving standing by a preponderance of the evidence.” *Id.* at 1277.

5 In this case, Louis’ assertion of ownership in his responses to the Government’s  
6 special interrogatories together with the fact that the currency was seized from the car he  
7 was driving would be enough to establish standing under \$ 148,840.00. However, as the  
8 Government points out in its motion to strike Louis’ discovery responses, Louis  
9 responded to the Government’s special interrogatories only where advantageous to his  
10 cause. He conclusorily claimed an ownership interest in response to the Government’s  
11 inquiries into the nature of his property interest in the currency, but declined, on Fifth  
12 Amendment self-incrimination grounds, to respond to follow-up questions about the  
13 details of that ownership interest, including how, why, or where he obtained the funds.  
14 Louis’ invocation of the Fifth Amendment is therefore indistinguishable from that of the  
15 claimant in \$ 148,840.00 and is a clear example of the impermissible use of the privilege  
16 as both a shield and a sword. Louis cannot be permitted to respond where it benefits his  
17 standing position yet shield that response from further scrutiny, thereby using the Fifth  
18 Amendment privilege “to mutilate the truth.” *Parcels of Land*, 903 F.2d at 43.

19 The Court will therefore exercise its discretion to strike Louis’ interrogatory  
20 responses and therefore his evidentiary assertion of ownership. What remains is the  
21 undisputed fact that Louis was in physical possession of the currency when it was seized.<sup>3</sup>  
22 Louis has provided no explanation of that possession. Mere unexplained possession is  
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25 <sup>3</sup>Louis argues that the presence of a set of throwing daggers in the same box as that  
26 containing the currency and the fact that a receipt for its purchase was found on Louis’  
27 person is additional evidence of ownership. The Court is not persuaded. While the receipt  
28 is evidence that he owns the set of daggers, it adds nothing to the circumstance that the  
money was in the trunk of his car.

1 insufficient for standing at any stage of the proceeding. *See* \$ 191,910.00 in U.S.  
2 *Currency*, 16 F.3d at 1058; \$ 148,840.00 in *United States Currency*, 521 F.3d at 1275-76.

3       The Court is mindful that the rules of decision proposed by both sides in this case  
4 are open to abuse. On the one hand, striking standing on bare claims of ownership hidden  
5 behind Fifth Amendment silence, at the summary judgment stage where actual evidence  
6 is needed, spares the Government from litigation from those who will never prove their  
7 ownership. Were it otherwise, mere drug couriers could challenge forfeiture of their  
8 cargoes. The Court finds no direct authority that courier's title alone suffices for standing  
9 when the claimant must go beyond pleadings to evidence. On the other hand, this rule can  
10 occasionally allow the Government to profit from its own illegal searches and seizures by  
11 shielding them from scrutiny. Such a result would be troubling where a claimant who is  
12 in fact the true owner of the res declines to explain his interest because it may appear to  
13 incriminate him, whether he is guilty of a crime or not. The Fifth Amendment protects  
14 the innocent and the guilty alike.

15       On balance, the recently-enacted Supplemental Rule G appears to tip the scale in  
16 favor of the Government's interest in not defending against claims without minimal  
17 evidence of standing. It does so by allowing the Government to propound special  
18 interrogatories and to challenge a claimant's standing by summary judgment early in the  
19 proceeding. *See* Supp. R. Certain Adm. & Mar. Cl. G(6)(a), (8)(c)(ii)(B). In the event  
20 disputed issues of material fact preclude summary judgment, the Court may evaluate  
21 standing by a preponderance of the evidence at an evidentiary hearing without a jury. *See*  
22 2006 Advisory Committee Notes to Supp. R. Certain Adm. & Mar. Cl. G(8)(c)(ii)(B).  
23 What is clear from Supplemental Rule G is that upon proper motion, claimants must now  
24 produce *evidence* to support their claimed interest in the res. This Court is not free to re-  
25 weigh the balance struck by Rule G. Louis' claim is therefore stricken. It remains for the  
26 Government to file a proper motion for judgment.

27       IT IS THEREFORE ORDERED that the Government's Motion to Strike Louis'  
28 Discovery Responses (doc. # 79) is granted.

1 IT IS FURTHER ORDERED that the Government's Motion to Strike Louis'  
2 Claim and Answer (doc. # 27) is granted.

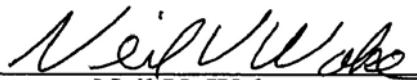
3 IT IS FURTHER ORDERED that Claimant Damon Louis' Motion to Suppress  
4 (doc. # 22) is denied for lack of standing.

5 IT IS FURTHER ORDERED that the Government's Motion to Stay Louis'  
6 Motion to Suppress (doc. # 29) is denied as moot.

7 IT IS FURTHER ORDERED that Louis' Motion for Summary Judgment (doc. #  
8 42) is denied for lack of standing.

9 IT IS FURTHER ORDERED that Louis' Motion to File Supplemental  
10 Memorandum (doc. # 53) is denied as moot.

11 Dated: June 23, 2010.

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Neil V. Wake  
United States District Judge